

**Notice of Allowability**

Application No.

09/869,433

Examiner

Padmavathi v Baskar

Applicant(s)

MURDIN ET AL.

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 2/21/04 and 4/8/04.
2. ☒ The allowed claim(s) is/are 44-60, 79 and 83 have been renumbered as 1-19 respectively.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date 3/23/04 and 4/1/04
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

  
**LYNETTE R. F. SMITH**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 1600**

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***Response to after final Amendment***

1. The after final amendment filed on 2/21/04 and 4/08/04 has been entered into the record.

***Status of Claims***

2. New claims 88-93 have been added.  
Claims 44-93 are pending in the application  
Claims 44-45, 47, 51, 52, 56, 59, 79 have been amended.  
Claims 61-78, 80-82, 84 -93 have been cancelled.  
Claims 44-60, 79 and 83 are currently under examination.

***Rejections Withdrawn/moot***

3. In view of amendment to the claims, the rejection of claims 44, 47-50. under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter is withdrawn.
4. In view of amendment to the claims and cancellation of claims, the rejection of claims 44, 46-57, 59-60 and 83 under 35 U.S.C. 112, first paragraph (written description) is withdrawn.
5. In view of amendment to the claims and cancellation of claims, the rejection of claims 44, 46-57, 59-60 and 83 under 35 U.S.C. 112, first paragraph scope of enablement is withdrawn
6. In view of amendment to the claims and cancellation of claims, the rejection of claims 44-62 and 79 under 35 U.S.C. 102(a) as being anticipated by Kalman et al. (Accession number AE001619, 'Submitted 12/1/98' & 'Nat. Genet. 1999, 21(4): 385-389, reference A 58 on PTOL-1449) is withdrawn.
7. In view of cancellation of claims, the rejection of claims 61-62 under 35 U.S.C. 102(b) as being clearly anticipated by Boehringer Mannheim Biochemicals (1991

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Catalog page 557), Stratagene (1991 Product Catalog, page 66), Gibco BRL (Catalogue & Reference Guide 1992, page 292), Promega (1993/1994 Catalog, pages 90-91) or New England BioLabs (Catalog 1986/1987, pages 60- -62) is moot.

8. In view of amendment to the claims and cancellation of claims, the rejection of claims 44-62 and 79 under 35 U.S.C. 102 (a) as being anticipated by Griffais R Accession No: AAX91990, WO 9927105, published on 6/3/99) is withdrawn.

9. In view of amendment to the claims and cancellation of claims, the rejection of claims 44-62 and 79 under 35 U.S.C. 102 (e) as being anticipated by Griffais R, U.S. Patent 6, 559,294 is withdrawn.

10. The claims 44-60, 79 and 83 as presented now define an isolated nucleic acid which encodes the recombinant polypeptide, SEQ.ID.NO: 2, a vaccine vector pCA1764 *C.pneumoniae*. The claimed subject matter is neither disclosed nor taught by the prior art as the claims now are drawn to an isolated nucleic acid molecule which encodes the polypeptide SEQ.ID.NO: 2.

#### Remarks

11. Claims 44-60, 79 and 83 are allowed and have been renumbered as 1-19 respectively.

12. Papers related to this application may be submitted to Group 1600, AU 1645 by facsimile transmission. Papers should be transmitted via the PTO Fax Center, which receives transmissions 24 hours a day and 7 days a week. The transmission of such papers by facsimile must conform with the notice published in the Official Gazette, 1096 OG 30, November 15, 1989. The RightFax number for submission of before-final amendments is (703) 872-9306. The RightFax number for submission of after-final amendments is (703) 872-9307.

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Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Padma Baskar Ph.D., whose telephone number is ((571) 272-0853. A message may be left on the Examiner's voice mail system. The Examiner can normally be reached on Monday to Friday from 6.30 a.m. to 4.00 p.m. except First Friday of each bi-week.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on (571) 272-0864. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

Padma Baskar Ph.D.

4/14/04